



State of Delaware  
**Public Service Commission**  
861 Silver Lake Blvd.  
Cannon Building, Suite 100  
Dover, Delaware 19904  
Telephone: (302) 736-7500

June 11, 2019

**TO:** The Chairman and Members of the Commission

**FROM:** Patricia Gannon, Public Utility Analyst *PAG*

**SUBJECT:** IN THE MATTER OF THE DELAWARE PUBLIC SERVICE COMMISSION'S JURISDICTION OVER ELECTRIC VEHICLE CHARGING STATIONS AND SERVICE PROVIDERS (FILED JUNE 11, 2019). – PSC DOCKET NO. 19-0377

---

**Staff Review:**

Utility commission regulation of electric vehicle charging stations is a major issue being addressed by many states. Twenty four states and jurisdictions in three additional states have taken steps to exempt electric vehicle supply equipment from the definition as a public utility with seven more states currently considering the issue<sup>1</sup>. According to a recent report, at least 16 states have addressed the changes through revisions to statutes or legislative bills, but Staff research shows 26 states have addressed the changes in this manner, while at least ten commissions opened dockets to address the issue.

The following is a summary of key state regulation activities.

Alabama: In Docket 32694, the Public Service Commission opened a proceeding in 2017 to determine if vehicle charging stations were subject to the jurisdiction of the Commission as defined in Alabama Code Section 37-4-1. The statute includes three requirements in the definition of public utilities. "First, the equipment in question must be plant, property, or facilities used for the generation, transmission or distribution, sale or furnishing of electricity. Second, the electricity must be for light, heat, power or other uses. Third, the electricity must be

---

<sup>1</sup> North Carolina Clean Energy Technology Center, The 50 States of Electric Vehicles: Q1 2019 Report, May 2019, p. 39, Figure 10.

made available to or for the public.”<sup>2</sup> After receiving comments from utilities, state agencies, and electric vehicle charging companies, the Commission determined that charging stations are not subject to Commission jurisdiction but clarified that the Commission does have jurisdiction over cost recovery if utilities own or operate charging stations.

Arkansas: Senate Bill 272 was signed by the Governor in 2017. The bill excludes charging stations from the definition of a public utility and modifies the state Code to include this exception.

Arizona: In 2018, the Arizona Corporation Commission deferred the question of whether charging stations providing electricity to the public. A brief filed by the Residential Utility Consumer Office concluded that “owners and operators of charging stations are public utilities and that light regulation would be appropriate.”<sup>3</sup> The case is ongoing.

California: A settlement in a docket filed by SDG&E allows the utility to “own and operate the make-ready infrastructure on the utility's side of the meter, rather than the actual charging equipment.”<sup>4</sup> In December 2018, comments on the settlement were filed and a prehearing conference was scheduled for February 2019.

Colorado: Under Senate Bill 77 charging stations are not subject to public utility regulation. The bill initially included strong wording allowing utilities to build and recover the costs of charging stations but amendments limit the cost recovery. “The retail rate impact from the development of electric vehicle infrastructure must not exceed one-half of one percent of the total annual revenue requirements of the utility.”<sup>5</sup> The bill is currently awaiting the Governor’s signature.

Connecticut: House Bill 12-1258 excludes charging stations from the definition of a public utility.

District of Columbia: Council Bill 19-749 excludes charging stations from the definitions of electric company and public utility. The bill also requires the Department of Motor Vehicles to provide the electric company with a list of registered electric vehicles for planning and reliability purposes.

Florida: Passed revised statute §27-366.94 that states that electric charging station rates and services are not subject to regulation by the Commission and that the sale of electricity through charging stations is not considered to be retail sale of electricity.

---

<sup>2</sup> GENERIC PROCEEDING TO DETERMINE THE COMMISSION’S JURISDICTION OVER ELECTRIC VEHICLE CHARGING STATIONS, Docket No. 32694, Order (AL PSC June 22, 2018) at 2 (“AL PSC Order”).

<sup>3</sup> *Id.* at 42

<sup>4</sup> *Id.* at 44

<sup>5</sup> Electric Motor Vehicles Public Utility Services Act of 2017, S.B. 77, 116<sup>th</sup> Cong. at 3 (2019)

Hawaii: Passed revised statute §269-1 that exempts charging stations from the definition of public utilities.

Idaho: Passed revised Idaho Code Section 61-119 that exempts electricity “purchased from a public utility...to charge the batteries of an electric motor vehicle”<sup>6</sup> from the definition of an electric corporation.

Illinois: The Public Utilities Act was amended by House Bill 5071 to state that that “an entity that furnishes the service of charging electric vehicles does not and shall not be deemed to sell electricity and is not and shall not be deemed a public utility.”<sup>7</sup>

Iowa: House Bill 520 “establishes that EV charging stations are not electric utilities and are not subject to utility regulation”<sup>8</sup> and prohibits utilities from “imposing discriminatory rates, charges, terms, or conditions on charging stations.”<sup>9</sup> In 2018, several truckstop associations filed a docket asking for clarification over jurisdictional issues associated with charging stations. After hearing comments, the Utilities Board proposed rules to exclude electric vehicle charging stations from regulation.

Kentucky: In 2014, the Public Service Commission opened a proceeding to review the issue of jurisdiction over charging stations including whether charging stations meet the definition of an electric utility, whether charging stations fall under franchise rules, whether charging stations should be permitted to generate their own power, and whether utilities should have a role in electric vehicle infrastructure. The opening order notes that “23 states and the District of Columbia have enacted laws or made regulatory determinations that EVCS [Electric Vehicle Charging Station] owners or operators are not electric utilities as defined by law, and therefore are not regulated utilities.”<sup>10</sup>

Maine: Legislative Document 593/Senate Paper 209 amended the Maine code to exclude charging stations from the definition of a competitive electricity provider, and to “allow the resale of electricity by electric vehicle charging stations.”<sup>11</sup>

Maryland: Passed Senate Bill 998 and House Bill 1279 in 2012 to exclude owners and operators of charging stations from the definition of an electricity supplier or a public service company. Senate Bill 998 and House Bill 1279 permits the Motor Vehicle Administration to share electric vehicle information with utilities for planning and reliability. <sup>12</sup>

---

<sup>6</sup> Idaho State Code, Section 61-119, at 1, (2015)

<sup>7</sup> Illinois Public Utilities Act 220 ILCS 5/3-105 at 1 (2012)

<sup>8</sup> North Carolina Clean Energy Technology Center, The 50 States of Electric Vehicles: Q1 2019 Report, May 2019, p. 46

<sup>9</sup> *Id* at 46

<sup>10</sup> IN THE MATTER OF COMMISSION JURISDICTION OVER ELECTRIC VEHICLE CHARGING STATIONS, Case No. 2018-00372, Order (KY PSC November 29, 2018) at 2 (“KY PSC Order”).

<sup>11</sup> Maine An Act to Allow the Resale of Electricity by Electric Vehicle Charging Stations, S.P. 209, 127<sup>th</sup> Cong. at 1 (2015)

<sup>12</sup> Maryland Electric Vehicle Infrastructure Council Interim Report, December 2015, Appendix B.

Massachusetts: The Commission opened Case 13-182 and issued an order stating that “owners and operators of electric vehicle supply equipment that provide electric vehicle charging are not distribution companies.”<sup>13</sup> The order also clarifies that Commission has no jurisdiction over charging station service and the service is not considered to be the sale of electricity.

Michigan: Docket U-20162 addressed DTE’s request for cost recovery for an EV program that includes education, support of residential chargers, and charging infrastructure. DTE “argued against EVSE owners being able to resell electricity”<sup>14</sup>. A proposal for decision found that “DTE Electric should be directed to file amended tariffs to permit sale-for-resale for commercial EV charging site hosts”<sup>15</sup>.

Minnesota: Minnesota Statute §216B.02 excludes electric vehicle charging from the definition of a public utility.

Missouri: House and Senate bills exclude “persons and corporations that furnish electricity exclusively to charge electric or hybrid vehicles”<sup>16</sup> from the definition of a public utility. House Bill 287 was passed in April 2019.

Montana: House Bill 456 was passed by the House and Senate in first quarter 2019. The bill states that charging stations are not public utilities. “The bill prohibits charges for fueling EVs from being based on the cost of electricity.”<sup>17</sup>

Nevada: Nevada Statute NRS 704.021 (11) excludes owner and operators of vehicle charging stations from the definition of a public utility.

New Hampshire: Senate Bill 575 of 2018 excluded charging stations from the definition of utility and public utility and required public utilities to have vehicle charging station tariffs.

New York: In Case 13-E-0199, the New York State Public Service Commission issue a declaratory ruling that charging stations are not electric corporations, the Commission does not have jurisdiction over charging stations, and e “transactions between the owners or operators of publicly available electric vehicle charging stations...and members of the public.”<sup>18</sup>

---

<sup>13</sup> INVESTIGATION BY THE DEPARTMENT OF PUBLIC UTILITIES UPON ITS OWN MOTION INTO ELECTRIC VEHICLES AND ELECTRIC VEHICLE CHARGING, Case No. 13-182, Order 13-182-A (MA PSC August 4, 2014) at 15 (“MA PSC Order”).

<sup>14</sup> North Carolina Clean Energy Technology Center, The 50 States of Electric Vehicles: Q1 2019 Report, May 2019, p. 50

<sup>15</sup> *Id* at 50

<sup>16</sup> North Carolina Clean Energy Technology Center, The 50 States of Electric Vehicles: Q1 2019 Report, May 2019, p. 50

<sup>17</sup> *Id* at 52

<sup>18</sup> IN THE MATTER OF ELECTRIC VEHICLE POLICIES, Case 13-E-0199, Order (NY PSC November 22, 2013) at 5 (“NY PSC Order”)

North Carolina: House Bill 329 was passed by the House in April 2019 and exempts charging stations that resell electricity to the public are not considered to be public utilities.

New Jersey: Assembly Bill 1376 allows “utilities to operate public EV charging stations as a regulated service in underserved markets.”<sup>19</sup> The bill also states that non-utility charging stations are not regulated by the Board of Public Utilities, and defines “EV charging a service rather than a sale of electricity , and notes that a person owning, controlling , operating , or managing an EV charging station will not be deemed a public utility due to these services.”<sup>20</sup>

New Mexico: House Bill 521, signed by the Governor in April 2019 states the term public utility does not include “the retail distribution of natural gas or electricity for vehicular fuel.”<sup>21</sup>

New York: The Governor signed a bill that allows the New York Power Authority to develop charging stations.

Oklahoma: The Commission issued a proposed rulemaking that would have excluded charging stations from rate regulation, but the electric vehicle portions were not included in the final version of the proposed rules adopted in January 2019.

Oregon: Oregon Statute §757.005(1)(b)(G) excludes charging stations from the definition of a public utility.

Pennsylvania: The Commission began their discussions in 2017 and in 2018 and 2019 the Commission adopted a policy statement that clarified that “third-party EV charging does not constitute a resale of electricity”<sup>22</sup> and utilities are required to include EV charging in their tariffs. The tariffs filed by the utilities were approved in first quarter 2019.

Texas: The City of Austin Code Section §15-9-121 was changed to remove restrictions on the resale of energy. These restrictions do not apply to charging stations.

Utah: House Bill 19 in 2014 led to changes in the Utah Code that now states that an “electrical corporation does not include an entity that sells electric vehicle battery charging service.”<sup>23</sup>

Virginia: A bill passed by the General Assembly exempts state agencies that own and operate electric vehicle charging stations from public utility regulation and allows the Department of Motor Vehicles to operate fee based charging stations on its property.

---

<sup>19</sup> *Id* at 53

<sup>20</sup> *Id* at 53

<sup>21</sup> New Mexico PRC Application for Vehicle Electricity Act of 2019, H.B. 521, 116<sup>th</sup> Cong. at 3 (2019)

<sup>22</sup> North Carolina Clean Energy Technology Center, The 50 States of Electric Vehicles: Q1 2019 Report, May 2019, p. 56

<sup>23</sup> Utah Code §54-2-1 at 2 (2018)

Vermont: The Commission opened a docket to clarify the jurisdictional issues and noted that reaching a conclusion was a priority. The Commission sent letters to the Chairs of several Senate Committees recommending that the Commission does not have authority to regulate charging stations. There are now pending bills that would “clarify that the Public Utility Commission does not have jurisdiction over non-utilities developing charging stations.”<sup>24</sup> House Bill 529, passed by the House in March 2019, also allows regulated utilities to offer charging stations only through unregulated affiliates.

Washington: House Bill 1664 authorizes utilities to build electric vehicle infrastructure.

West Virginia: The West Virginia Code §24-2D-3 was revised to limit Commission jurisdiction over the sale by nonutility’s of fuels used to charge vehicles.

---

<sup>24</sup> *Id* at 38.

Electric vehicle supply equipment **exempt from definition of public utility** in 24 States<sup>25</sup>:

- |                |                   |                   |
|----------------|-------------------|-------------------|
| 1. Alabama     | 9. Illinois       | 17. New Mexico    |
| 2. Arkansas    | 10. Iowa          | 18. New York      |
| 3. California  | 11. Maine         | 19. Oregon        |
| 4. Colorado    | 12. Maryland      | 20. Pennsylvania  |
| 5. Connecticut | 13. Massachusetts | 21. Utah          |
| 6. Florida     | 14. Minnesota     | 22. Virginia      |
| 7. Hawaii      | 15. Nevada        | 23. Washington    |
| 8. Idaho       | 16. New Hampshire | 24. West Virginia |

Electric vehicle supply equipment **exempt from definition of public utility in certain jurisdictions** in 3 states:

1. Michigan
2. Louisiana
3. Texas

Electric vehicle supply equipment regulation under consideration in 7 states:

1. Montana
2. Arizona
3. Wisconsin
4. Missouri
5. Kentucky
6. North Carolina
7. Vermont

No regulation activity occurring: 16 states

- |                |                  |                    |
|----------------|------------------|--------------------|
| 1. Alaska      | 7. Nebraska      | 13. South Carolina |
| 2. Delaware    | 8. New Jersey    | 14. South Dakota   |
| 3. Georgia     | 9. North Dakota  | 15. Tennessee      |
| 4. Indiana     | 10. Ohio         | 16. Wyoming        |
| 5. Kansas      | 11. Oklahoma     |                    |
| 6. Mississippi | 12. Rhode Island |                    |

---

<sup>25</sup> North Carolina Clean Energy Technology Center, The 50 States of Electric Vehicles: Q1 2019 Report, May 2019, p. 39, Figure 10.